an obstruction to navigation is authorized, the State, nevertheless, retaining control over the river, and one where the State completely divests itself of control over the navigation of a stream. On the facts of the principal case, however, the dissenting view seems preferable, as the grant might reasonably have been construed to reserve to the State the right to enter and improve the stream whenever it should see fit, for the presumption that such a right is reserved seems sufficiently strong to warrant the courts to require overwhelming proof of its abandonment.

ASSIGNABILITY OF CONTRACTS.—It was the rule of the ancient common law that a chose in action could not be alienated or assigned except by the king or to him, and for the reason that a chose in action presupposes a personal relation which cannot be transferred.[1] But this hard and fast rule was soon avoided by the device of a power of attorney, allowing the grantee of the power to use the grantor's name in a suit at law on the obligation.[2] If after the assignment so effected the assignor will not allow the suit in his name, or if, after notice, the obligor and the assignor have colluded in derogation of the assignee's rights at law, the assignee may bring a bill in equity to enforce his rights.[3] Not a few jurisdictions have adopted statutes allowing the assignee, as the real party in interest, to sue at law in his own name;[4] but such a statute works no change in the fundamental rights of the parties, and involves merely a change of procedure.[5]

If, therefore, one of the contracting parties possesses a contract right to demand some obligation from the other, and if such right is unattended by a reciprocal duty or obligation, there is no difficulty in giving full effect to an assignment of it, as of a mere chose in action.[6] When, however, rights arising from executory contracts are coupled with obligations, no such sweeping doctrine as to their assignability is applicable. Executory contracts are held to be not assignable when they impose upon him who attempts to assign a relation of trust

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[1]See essay by J. B. Ames on the Inalienability of Choses in Action, Ames' Lectures on Legal History, 210, which declares unsound the view that the rule rests on an aversion to maintenance. See Lampet's Case (1613) 10 Co. *46a; 2 Bl., Comm., *442.

[2]2 Bl., Comm., *442; see Glenn *v.* Marbury (1892) 145 U. S. 499. From this it follows that the assignee can have no better claim than his assignor. Any payment to the assignor, moreover, before notice of the assignment is given the obligor, is binding as against the assignee. Pollock, Contracts (8th ed.) 499.

[3]See Hayward *v.* Andrews (1882) 106 U. S. 672; Hammond *v.* Messenger (1838) 9 Simon *327. Since assignment proceeds on the theory of agency, any satisfaction rendered the assignor, being a satisfaction of the principal, constitutes a valid defense in a suit at law by the assignee, the agent.

[4]New York Code of Civil Procedure, § 449; California Code of Civil Procedure, § 367; Burn's Annotated Indiana Statutes, § 251.

[5]Glenn *v.* Busey (D. C. 1886) 5 Mack. 233. In this country where law and equity are administered by the same courts, a court of law will take cognizance of equitable grounds of relief in favor of the assignee. Welch *v.* Mandeville (1816) 1 Wheat. 233.

[6]Pollock, Contracts (8th ed.) 499.

or confidence,[7] or if it would be inconsistent with the nature of the contract and the rights of the parties to presume that they contemplated other than performance in person.[8] On the other hand, when the contract is so impersonal as not to fall within either of these prohibitions, it is assignable, even though executory, in the absence of any express limitation on assignment in the contract itself.[9] This rule rests on the ground that if the promissor could not object to performance by a *bona fide* agent of the assignor, he should not be allowed to object to performance by an assignee merely because he possesses an interest in connection with his power as agent. In general, the same rule applies to the assignment of executory contracts by act of the parties which applies to their assignment or transfer by operation of law;[10] but while the rule is capable of satisfactory definition, in its application to each case the decision necessarily rests upon the particular facts involved. Accordingly, different jurisdictions applying the same principle reach apparently conflicting results; a contract with a State to do its printing being held in one court to be assignable,[11] and a similar contract with a county being held by another court to be so personal as to inhibit any assignment;[12] and contracts for building public works are in most jurisdictions assignable,[13] but not in all.[14] Similarly, while contracts to install electric lighting,[15] and for setting out and pruning fruit trees,[16] are held to be so personal as to prevent their assignment, a contract for painting and decorating is not of such a personal nature.[17] In the recent case of

[7]Arkansas Valley Smelting Co. *v.* Belden Mining Co. (1888) 127 U. S. 379; 3 Page, Contracts, § 1262.

[8]Sloan *v.* Williams (1891) 138 Ill. 43; Chitty, Contracts (11th Am. ed.) 1363; 3 Page, Contracts, § 1262. But the right to payments to become due on an executory contract which imposes a trust or calls for strictly personal services on the part of the assignor, can be so separated from the performance of the contract as to render an assignment of such payments binding when earned. Sharp *v.* Edgar (N. Y. 1849) 3 Sandf. 379.

[9]Devlin *v.* Mayor (1875) 63 N. Y. 8.

[10]Sears *v.* Conover (N. Y. 1861) 34 Barb. 330; *cf.* White's Executors *v.* Commonwealth (1861) 39 Pa. 167; see Devlin *v.* Mayor, *supra;* Hyde *v.* Dean & Canons of Windsor (1597) Cro. Eliz. 552.

[11]Carter *v.* State (1895) 8 S. Dak. 153.

[12]Campbell & Hood *v.* Sumner County (1902) 64 Kan. 376. The court, in this case, considered its decision to be squarely opposed to Carter *v.* State, *supra,* but it would seem that the cases might have been distinguished on the ground that in the latter case there was public bidding for the contract, which tended to show that performance in person was not important.

[13]Anderson *v.* De Urioste (1892) 96 Cal. 404; see City of St. Louis *v.* Clemens (1867) 42 Mo. 69; Ernst *v.* Kunkle (1856) 5 Ohio St. 520.

[14]Pike *v.* Waltham (1897) 168 Mass. 581. This case proceeds on the theory that if the assignee had been allowed to pursue the contract the city would have lost its right against the assignor for any breach. The implied novation suggested, however, is not in accord with the weight of authority, which continues the assignor's liability for breach after assignment. Pollock, Contracts (8th ed.) 499; Rochester Lantern Co. *v.* Stiles Co. (1892) 135 N. Y. 209.

[15]Swarts *v.* Narragansett Electric Lighting Co. (1904) 26 R. I. 388.

[16]*Cf.* Edison *v.* Babka (1896) 111 Mich. 235.

[17]See Janvey *v.* Loketz (N. Y. 1907) 122 App. Div. 411.

Nassau Hotel Co. v. *Barnett & Barse Corporation* (N. Y. Sup. Ct. App. Div. 1st Dept.) 162 App. Div. 381, it was held that where the owner of a hotel leased the premises and furnishings to an experienced hotel man and agreed to accept a percentage of the gross receipts as rental, the contract of lease was not assignable to a corporation, as the lessor had depended on the experience and reliability of the lessee in making the lease. This seems to be clearly correct within the principle that contracts of a personal nature are not assignable, for the reason that the profits of the lessor depended directly upon the skill and efficiency with which the hotel was conducted.[18]

[18]Contracts in partial restraint of trade are held to be assignable to a vendee of the business with respect to which they were made. Hedge. Elliott & Co. *v.* Lowe (1877) 47 Ia. 137; Francisco *v.* Smith (1894) 143 N. Y. 488; Diamond Match Co. *v.* Roeber (1887) 106 N. Y. 473; Up River Ice Co. *v.* Denler (1897) 114 Mich. 296. Contracts for support and maintenance are not assignable. Clinton *v.* Fly (1833) 10 Me. 292; Bethlehem *v.* Annis (1860) 40 N. H. 34.